IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12270 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAVAL CHETANABEN JITENDRABHAI

Versus

ADMINISTRATIVE OFFICER

Appearance:

1. Special Civil Application No. 12270 of 2004

MR DIPAK R DAVE for Petitioner No. 1

MR SHUKLA, NANAVATI & NANAVATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 14/02/2005

ORAL JUDGEMENT

RULE. Shri Shukla waives service of notice of rule on behalf of the respondent. At the joint request of the learned advocates appearing for the parties, this petition is taken up for final disposal today.

2. In the present petition, the petitioner has challenged the action of the respondent in not releasing her increments from time to time. The petitioner has

prayed for a direction to the respondent to immediately release her due increments as per rules.

3. The petitioner, who was initially working as a junior clerk with the respondent-school board, applied for the post of Craft Teacher on 17-1-1997. The respondent actually issued an order dated 27-6-1997 appointing the petitioner to the said post of Craft Teacher. This appointment was preceded by a resolution dated 8-5-1997. The petitioner is discharging the duties on the said post ever since and presently also the petitioner is working as a Craft Teacher with the respondent. The petitioner has not been given her due increments falling due as per rules and the petitioner has therefore filed the present petition.

4. In response to the notice issued by this Court, learned Counsel Shri Shukla has appeared for the respondent. He confirms the fact that the petitioner had applied for the post in question and was actually appointed pursuant to the resolution issued by the board and that the petitioner is discharging duties as a Craft Teacher since 1997. He submits that her increments were not released on account of audit objections raised by the audit party of the Ahmedabad Municipal Corporation. He submits that the audit objection was based on the fact that public advertisement was not called for before appointing the petitioner.

5. Since facts are not in dispute, it can be seen that the petitioner was appointed to the post of Craft Teacher by the respondent through a resolution passed in the year 1997 and the petitioner is discharging her duties on the said post ever since her appointment pursuant to the order dated 27-6-1997. When the petitioner is appointed through a proper resolution and is discharging her duties on the post of Craft Teacher, it would not be permissible for the respondent to withhold the increments falling due. It is not the case of the respondent that the appointment of the petitioner was declared as illegal or that any corrective steps were taken or sought to be taken in this regard. Thus, as long as the appointment of the petitioner is continued, it would not be open for the respondent to deny full salary in accordance with rules to the petitioner.

6. Under these circumstances, by allowing the present petition, the respondent is directed to release the increments of the petitioner as falling due as per the rules. Her pay fixation may be carried out accordingly. Arrears falling due shall also be paid over

to the petitioner. The entire exercise shall be completed within a period of three months from the date of receipt of copy of this order.

7. With these directions, this petition is allowed. Rule is made absolute. No order as to costs.

(Akil Kureshi, J.)
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